

- There must be an unbroken chain of events such that the homicide is part of a series of events forming one continuous transaction,
- The defense of self-defense is generally not available to a defendant on a charge of felony murder,
- All participants in the underlying felony are guilty of and may be convicted of felony murder.

Mr. Hart stated that under current law, felony murder is punishable by death or imprisonment for life without parole.

Mr. Hart discussed issues that relate to punishment for felony murder. He said that the underlying felony that was a basis for a conviction of felony murder cannot be used as an aggravating circumstance in sentencing. He further said that if one is convicted of felony murder only, the defendant cannot be punished for the felony that served as the basis for the felony murder conviction. Mr. Hart stated that although all participants in a felony that results in death may be convicted of felony murder, not all of those convicted of felony murder are eligible for the death penalty. He said that a defendant guilty of felony murder may only be sentenced to death if that defendant individually fits one of the following categories:

- Killed or attempted to kill the victim,
- Intended that the victim be killed,
- Intended that deadly force would be used in the course of the underlying felony that supported the felony murder conviction,
- Was a major participant in the underlying felony supporting the felony murder conviction and showed a reckless indifference to human life.

Mr. Hart reviewed a few cases in which felonies have been found to properly support convictions of felony murder. Those cases are outlined in his handout.

Representative Sutton referenced the felony murder definition regarding “use of a deadly weapon” and asked Mr. Hart to distinguish between “use” and “possession” if the weapon is not used. Mr. Hart replied that possession and use are determined to be the same and referenced State v. Fields, a case before the Supreme Court of North Carolina in 1985. The Court found that “the simple fact that the felon has a weapon in his possession creates a substantial, foreseeable human risk.” Representative Sutton asked if a person who had a pocket knife in his possession, but never used it in any manner and a death resulted from some other cause, would fit under the statute for merely having possession of the weapon. Mr. Hart replied that under the Fields case, the person would fit under the statute.

Referring to the definition of felony murder, Co-Chair Hackney asked if the “use of a deadly weapon” is only necessary to make felony murder for the category “or other